

REMARKS

The Examiner's Action mailed on March 22, 2004, has been received and its contents carefully considered.

In this Amendment, Applicant has editorially amended the specification and claims 1 and 2. Claim 1 is the independent claim. Claims 1 and 2 remain pending in the application. For at least the following reasons, it is submitted that this application is in condition for allowance.

The Examiner has objected to the claims for various informalities. In response thereto, the claims have been editorially amended to correct the informalities noted by the Examiner's Action, as well as to correct other informalities noted during the review. It is requested that these objections be withdrawn.

The Examiner has also rejected the claims as being indefinite. In response thereto, the claims have been amended to correct the matters specifically raised by the Examiner's Action, and to otherwise ensure that the claims comply with all official provisions. It is requested that these rejections be withdrawn.

The Examiner's Action has rejected claims 1 and 2 as being obvious over *Nix* (USP 6,234,858). It is submitted that these claims are patentably distinguishable over the cited reference for at least the following reasons.

Applicant's independent claim 1 is directed to a foam modular toy structure which includes a plurality of differently shaped solid components which are fabricated from an elastic foam material. Each solid component has an octagonal through-hole and/or a projecting umbrella-shaped tenon. The tenon of one of the components is insertable into the octagonal through-hole of another one of the components to allow the

components to be conjoined into toys. Moreover, an insertional coupling formed by the inserting of the umbrella-shaped tenon into the octagonal through-hole provides for a rotatably controlled joint application, which allows the components to be articulated at a range of angles, and kept in a fixed position without collapsing due to weight factors. Moreover, the umbrella-shaped tenons can be manually withdrawn from the octagonal through-holes due to the inherent elasticity of the elastic foam material. Thus, in accordance with Applicant's claimed invention, the configuration of the umbrella-shaped tenon and the corresponding octagonal through-hole allows the resulting toy to have sufficient rigidity so that it will not collapse due to weight factors, as might be the case for other configured toys. Further, due to the inherent elasticity of the foam material, the toy can be easily disassembled into its constituent parts. This claimed configuration is not disclosed or suggested by the cited reference.

Nix discloses a resilient crushable foam object that is comprised of interchangeable parts. For example, and as shown Figures 11 through 14, this reference discloses a foam elephant 200 in which the rear legs 204, 206, 208 and 210 can be attached to the body portions 214 and 212 utilizing rectangular shaped pins 216 and 218.

However, and in contrast to the present invention, this reference does not disclose or otherwise suggests component parts having umbrella-shaped tenons as recited by claim 1. Instead, and as noted above, the pins 216 and 218 are rectangular shaped, and do not have the umbrella-shape recited by claim 1. As such, these pins will not hold the resulting toy together with as much rigidity as would Applicant's claimed

umbrella-shaped tenons, so that the animal may fall apart due to its own weight, or during play with a child.

The Examiner's Action appears to acknowledge that the cited reference does not disclose a tenon having an umbrella shape, but states that it would have been an obvious matter of design choice to have made the portions of the foam modular toy of *Nix* to have whatever form or shape was desired or expedient. However, as noted above, Applicant's claimed umbrella-shaped tenons provide an important and critical function, that is, to prevent the toy from collapsing due to weight considerations or during play by the user. As such, it is submitted that the Examiner's Action has not established a *prima facie* case of obviousness against Applicant's independent claim 1, and therefore, it is requested that this claim, as well as dependent claim 2, be allowed and that this rejection be withdrawn.

It is submitted that this application is in condition for allowance. Such action and the passing of this case to issue are requested.

Should the Examiner feel that a conference would help to expedite the prosecution of the application, the Examiner is hereby invited to contact the undersigned counsel to arrange for such an interview.

Respectfully submitted,

April 29, 2004
Date

for Steve M. Rabin 29/102

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